83-1464

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
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No. 83-1464

In The

Supreme Court of the United States

October Term, 1983

FRANCES W. WEST,

Petitioner,

vs.

THE NATIONAL TRUST COMPANY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALFRED C. WEST, DECEASED, AND AS TRUSTEE FOR ELIZABETH C. WEST, UNDER ARTICLE V OF THE WILL OF ALFRED C. WEST, DECEASED

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

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(10475)

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STATEMENT OF THE CASE

Contrary to assertions found in the Petition for a Writ of Certiorari, this Appeal does not present questions of "great importance and interest all over the United States", nor does the Appeal involve a denial of due process or the failure to give Full Faith and Credit to a foreign judgment. As will be seen below, this Appeal only involves the failure of Petitioner to comply with an applicable provision of Florida's probate laws governing the presentation of claims against a decedent's estate. Accordingly, the Petition for a Writ of Certiorari to the Supreme Court of Florida should be denied.

Following the death of Alfred C. West, on July 9, 1981, the Circuit Court for Collier County, Florida accepted for probate the decedent's Last Will and Testament. Respondent, the National Trust Company, as Personal Representative of Mr. West's Estate, caused a Notice of Administration to be published on August 6, 1981. Prior to publication of the Notice of Administration, Petitioner Frances W. West caused a claim to be filed with the same Circuit Court on July 21, 1981. Petitioner's claim included a demand for monthly alimony and support payments which had been awarded to her pursuant to an Illinois divorce decree entered by the Superior Court of Cook County, Illinois on October 16, 1963. On November 5, 1981, Respondent filed a timely objection to Petitioner's claim and served Petitioner with a copy in accordance with Florida Statute 733.705(2).[1] The filing of the objection by the Respondent matured Petitioner's claim for the purposes of bringing an independent action upon the

[1] Respondent's objection to claim was filed on the basis that in both Florida and Illinois an obligation to pay alimony dies with the person who has the obligation unless he expressly agrees to bind his estate to continue alimony payments after his death. *O'Malley v. Pan American Bank of Orlando*, 384 So 2d 1258 (Fla. 1980); *Aldrich v. Aldrich*, 163 So 2d 276 (Fla 1964); *Cross v. Cross*, 5 Ill 2d 456 (1955) citing *Lennahan v. O'Keefe*, 107 Ill. 620; *Cooper v. Cooper*, 350 Ill. App. 37. Neither the Illinois divorce decree nor the property settlement agreement incorporated therein evidences an intent on the part of Mr. West to have his estate continue making monthly alimony payments. The only reference in the decree to Mr. West's estate is in a provision which obligated Mr. West to maintain a group life insurance policy on his life for $40,000 naming Petitioner beneficiary, and "in the event Alfred (Mr. West) shall become ineligible to maintain said Group Insurance, any amounts for alimony and support *due* (emphasis added) Frances (Petitioner), under the terms of this Agreement, shall become a lien against Alfred's (Mr. West's) estate...." Mr. West left his employment and became ineligible under the terms of the group life insurance policy. However, at the time of death, there were no support payments due Frances (Petitioner) since the minor child of the marriage had reached her majority in 1979. Further, Petitioner acknowledges at page 4 of her petition that Mr. West's alimony payments were never in arrears. Thus, there could be no claim and/or lien to impose against Mr. West's estate.

claim, and Petitioner thereafter was limited to 30 days from the date of service of the objection to commence a suit. Thus, Petitioner had until December 5, 1981, in which to file an independent action upon her claim.

On June 22, 1982, more than seven months after the date of service of Respondent's objection to Petitioner's claim, and more than six months after the December 5, 1981, deadline for commencement of an independent action as required by Florida Statute 733.705(3), Petitioner commenced her first action in the Circuit Court of Collier County, Florida, (Case No.82-1172, *West v. National Trust Company, et al.*, Appeal No. 82-2432).[2] The independent action of Petitioner sought to recover alimony from the Estate based upon the foreign divorce decree entered in the State of Illinois in 1963.

Respondent answered Petitioner's Complaint by raising five affirmative defenses which challenged the procedural and substantive merits of Petitioner's Complaint, including the defense of the bar of Florida Statute 733.705(3). Thereafter, Respondent moved to dismiss the Complaint in the Circuit Court, Collier County, upon the ground that Petitioner failed to comply with the mandatory provisions set forth in Florida Statute 733.705(3). On September 13, 1982, the Circuit Court granted Respondent's

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[2] On March 2, 1982, prior to the commencement of Petitioner's suit and after the December 5, 1981 deadline for commencement of a suit, Respondent filed a Petition to Compromise Petitioner's claim pursuant to Florida Statute 733.708. (See Respondent's Appendix at p. A-2). The petition was filed in an effort to settle petitioner's claim against the estate even though petitioner's claim was now barred by Florida Statute 733.705(3). Regrettably, negotiations with petitioner's counsel broke down and the petition to compromise was withdrawn with approval by the Circuit Court. It is important to note that although settlement negotiations had transpired between Respondent and Petitioner's counsel, Petitioner was not relieved of her responsibility to comply with all applicable provisions of Florida's probate laws including Florida Statute 733.705 (3). See *First Bank and Trust Co. of Jacksonville v. Bush*, 226 So. 2d 438,440 (Fla.1st DCA 1969); and *In Re Kemp's Estate*, 177 So 2d 757, 762 (Fla. 1st DCA 1965).

Motion to Dismiss Petitioner's Complaint with prejudice, and an Order and Judgment was subsequently entered by the Court on October 12, 1982. (See Petitioner's Appendix at p.5).

On September 24, 1982, Petitioner petitioned the Circuit Court, Probate Division, for an Order extending the time within which to file an independent action upon her claim, even though the independent action previously filed in the Circuit Court for Collier County had been dismissed with prejudice. On January 6, 1983, the Circuit Court, Probate Division, denied Petitioner's Motion for an Extension of Time within which to file an independent action on her claim as required by Florida Statute 733.705(3). (See Petitioner's Appendix at p. 7). Petitioner subsequently appealed each Order to the District Court of Appeal of Florida, Second District of Florida. Following the consolidation of the Appeals, the District Court of Appeal of Florida, Second District, rendered a per curiam opinion, dated November 9, 1983, affirming the Orders of the Collier County Circuit Court. (See Peitioner's Supplemental Appendix at p. 25). Petitioner subsequently filed a Notice of Appeal to the Supreme Court of Florida and petitioned that Court to exercise its discretionary jurisdiction to hear her appeal. By separate Orders dated December 6, 1983, and December 30, 1983, the Florida Supreme Court dismissed Petitioner's Appeal to that Court for want of jurisdiction and refused to grant Petitioner's Motion for Reinstatement of her Appeal. (See Petitioner's Appendix at pp. 1 and 3).

SUMMARY OF ARGUMENT

Petitioner seeks to enforce a claim for future alimony payments against the Estate of Alfred C. West. Said claim arises out of a divorce decree entered by the Superior Court of Cook County, Illinois in 1963. Mr. West died a resident of the State of Florida. Accordingly, Mr. West's estate, and all claims filed therewith, are subject to Florida's Probate laws governing the administration of estates.

Florida Statute 733.705 sets forth the procedure for the filing of an objection to claim and for the resolution of claims to which an objection has been filed. The latter provision provides that a claimant "shall be limited to 30 days from the date of service of an objection within which to bring an independent action upon the claim." If a party fails to comply with the limitation of time provided by this Statute, the claim will be barred.

Petitioner filed her claim against Mr. West's estate on July 21, 1981. Thereafter, Respondent, as Personal Representative of Mr. West's estate, filed a Notice of Objection on November 5, 1981, and served a copy of the same upon Petitioner's counsel as required by Florida Statute 733.705. Petitioner subsequently failed to commence an independent action on her claim until June 22, 1981, more than six months after the December 5, 1981 deadline for commencement of an action. Accordingly, Petitioner's claim is barred.

The existence of Petitioner's Illinois divorce decree did not, a fortiori, establish a valid claim against Mr. West's estate nor did the decree preclude the Florida Courts from reviewing the decree in order to determine if the decedent's estate was obligated to continue making monthly alimony payments. Thus, in following the provisions of Florida Statute 733.705, the lower state courts did not refuse to give Full Faith and Credit to the Illinois divorce decree.

Under Florida law a claimant has three months in which to present a claim following the first publication of the Notice of Administration, plus thirty days after an objection is filed in which to bring an action on the claim. Such a procedure reasonably contributes to the just, speedy and inexpensive administration of estates. Petitioner was fully aware of her rights and obligations under the Florida Probate laws, having filed a Statement of Claim shortly after Mr. West's death. Petitioner ignored or chose to ignore the applicable provisions of Florida Statute 733.705 and allowed nearly seven months to expire before com-

mencing a suit upon her claim. Accordingly, the application of Florida Statute 733.705's bar to Petitioner's claim did not operate to abridge Petitioner's due process rights under the Fourteenth Amendment to the United States Constitution.

The lower state courts committed no error in reviewing the procedural merits of Petitioner's suit to enforce her claim. Petitioner was permitted to raise consititutional arguments involving the applicability of Florida Statute 733.705 to her claim and the lower court decisions, by implication, rejected the same.

Lastly, there currently is pending, before the United States District Court, Southern District of Florida, a suit by Petitioner to enforce her claim for future alimony payments against the estate of Alfred C. West. Accordingly, Respondent submits that this action is not ripe for review by this Court.

ARGUMENT

I. IN FOLLOWING THE PROVISIONS OF FLORIDA STATUTE 733.705(3), THE LOWER FLORIDA COURTS DID NOT REFUSE TO GIVE FULL FAITH AND CREDIT TO PETITIONER'S ILLINOIS DIVORCE DECREE IN VIOLATION OF ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION.

A. *Petitioner Failed To Comply with Florida Statute 733.705.*

In order to facilitate the orderly administration of estates, Florida has enacted, inter alia, Florida Statute 733.705, which sets forth a procedure for both the payment of and objection to claims. In addition, this Statute limits the time in which a claimant may commence an independent action upon a claim to which a written objection has been filed. The applicable provisions of this Statute are as follows:

733.705 - *Payment of and Objection To Claims.*

(1) No personal representative shall be compelled to pay the debts of the Decedent until after the expiration of four months from the first publication of Notice of Administration....

(2) On or before the expiration of four months from the first publication of Notice of Administration, a personal representative or other interested person may file a written objection to any claim. An objection filed to an unmatured claim matures it for the purpose of bringing an action on it. If an objection is filed, the person filing it shall serve a copy of the objection by registered or certified mail to the address of the claimant as shown on the claim or delivery to the claimant to whose claim he objects or the claimant's attorney of record, if any, not later than ten (10) days after it has been filed, and also on the personal representative if the objection is filed by any interested person other than the personal representative. Failure to serve a copy of the objection constitutes an abandonment of the the objection.

(3) The claimant shall be limited to 30 days from the date of service of an objection within which to bring an independent action upon the claim. For good cause, the court may extend the time for filing an objection to any claim or the time for serving the objection, and may likewise extend the time for filing an action or proceeding after the objection is filed. The extension of time shall be granted only after notice. No action or proceeding shall be brought against the personal representative after the time limited above...

If a claimant fails to comply with the limitations of time set out above, any suit filed on the claim will be barred. *Poncier v. State Department of Health and Rehabilitative Services*, 284 So. 2d, 463 (Fla. 3rd DCA, 1973); *Michael's School of Dance, Language & Charm, Inc., v. Broward National Bank of Ft. Lauderdale*, 320 So.2d. 413 (Fla. 4th DCA 1975), and *S. J. Landau v. Estate of Riesner*, 372 So.2d 1134 (Fla. 2nd DCA 1979).

As noted previously, on November 5, 1981 Respondent timely filed and served upon Petitioner, a Notice of Objection to Petitioner's claim for alimony payments. Petitioner either ignored or chose to ignore the limitations set forth in Florida Statute 733.705(3). Moreover, Petitioner failed to establish good cause

for granting Petitioner an extension of time in which to file an action, said request not having been filed with the Circuit Court for Collier County until September 24, 1982. Accordingly, the lower circuit court, by separate Orders, properly dismissed Petitioner's independent action filed against Respondent on June 22, 1982, and denied Petitioner's Motion for an Extension of Time within which to file an independent action on its claim. (See Petitioner's Appendix at pp. 5 and 7).

B. *The Decisions of the Lower State Courts Do Not Conflict with Applicable Decisions of this Court.*

Petitioner cites this Court's decision in *Morris v. Jones*, 329 U.S. 545, 67 S. Ct. 451 (1947), in support of her argument that Florida Statute 733.705(3) is not applicable to her claim against the Estate of Alfred C. West. The facts in *Morris v. Jones* are easily distinguishable from those presented herein. In *Morris v. Jones*, the nature and amount of the claimant's claim against an insurer had been determined by a competent court of the State of Missouri. The Illinois Supreme Court refused to recognize the adjudication of the claim in the State of Missouri and instead reasoned that only Illinois had the power to adjudicate claims against the insolvent insurer. On appeal, this Court reversed the Illinois Supreme Court and held Illinois must give full faith and credit to the adjudication of a claim against the insurer by the Missouri courts.

In the instant appeal, Petitioner's claim did not arise until subsequent to the death of Alfred C. West, and the question of whether or not the Illinois decree's alimony provisions survived the decedent's death had not been litigated or determined. Indeed, an examination of the property Settlement Agreement incorporated in the decree reveals the absence of any provision which calls for the decedent's estate to continue making monthly alimony payments.[3]

[3] See fn. 1 *infra*.

Petitioner erroneously assumes that the existence of her divorce decree, in and of itself, constitutes a valid claim against the Decedent's estate, which cannot be reviewed or examined by the courts of the State of Florida. Such an argument misconstrues the requirement of the Full Faith and Credit clause as announced by this Court. In *People of the State of New York, ex rel. Halvy v. Halvy*, 330 U.S. 610, 91 L.Ed.1133 (1947), this Court noted that while the full faith and credit clause requires that the judgment of a sister state be given full credit in the State of the forum, the "judgment has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the State where rendered." 330 U.S. at 614, 91 L.Ed. at 1136. The latter construction was aptly explained by Justice Frankfurter, in his concurring opinion also rendered in *People of the State of New York, ex rel. Halvy v. Halvy:*

> The constitutional policy formulated by the full faith and credit clause cannot be fitted into tight little categories or too abstract generalities. That policy was the nationwide restriction of litigiousness, to the extent that States, autonomous for certain purposes, should not be exploited to permit repetitive litigation. In substance, the Framers deemed it against the national welfare for a controversy that was truly litigated in one state to be relitigated in another. *Such limitation does not foreclose inquiry into what was litigated and what was adjudicated* (emphasis added). 330 U.S.at 616, 91 L. Ed. at 1137

The existence of the Illinois divorce decree did not, a fortiori, establish a legitimate claim for alimony payments thereby rendering Florida Statute 733.705 (3) inapplicable, nor did the decree preclude the Florida Circuit Court from reviewing the decree in order to determine whether alimony obligations contained therein survived the death of Mr. West. Clearly, Petitioner has misconstrued the meaning of the Full Faith and Credit Clause.

Other cases cited by Petitioner are equally distinguishable. In *Aldrich v. Aldrich*, 378 U.S.540, 12 L.Ed. 2d 1020 (1964), this Court reversed the decision of the Supreme Court of West Vir-

ginia which had erroneously refused to give full faith and credit to a Florida divorce decree. The Florida decree expressly ordered a Defendant spouse to pay alimony and provided that upon the death of the spouse, the monthly alimony payment shall become a charge upon the decedent's estate. Because neither West Virginia nor Florida permitted an alimony obligation to survive a Decedent's death,[4] the West Virginia Supreme Court refused to recognize the Florida divorce decree. On appeal, this Court reversed that State Court's decision and held the Florida divorce decree must be given full faith and credit in West Virginia. In *Roche vs. McDonald*, 275 U.S. 449, 72 L.Ed. 365 (1928), also cited by Petitioner, this Court reversed a decision of the Washington Supreme Court which had refused to recognize a Judgment obtained by the Petitioners in the State of Oregon on the ground that had the Judgment been obtained in Washington, the Judgment would have been invalid due to a shorter State Statute of limitations. This Court held that the full faith and credit clause prohibits a State from refusing to recognize the validity of a another state's judgment because said judgment does not comport with the forum state's own policies. Similarly, in *Union National Bank of Wichita v. Lamb*, 337 U.S. 38, 93 L.Ed. 1190 (1949), another case cited by Petitioner, this Court reversed the decision of the Missouri Supreme Court which had refused to recognize a Judgment obtained by the Petitioner in the State of Colorado. The Petitioner obtained a Judgment in Colorado in 1927 and later revived the Judgment in Colorado in 1945. Missouri, on the other hand, required its judgments to be revived within ten years of the date the judgment was first issued. The Missouri Supreme Court reasoned that had the Petitioner attempted to revive the Judgment in Missouri, the Judgment would have been invalid due to that State's ten year limitation on judgments. In reversing

[4] Although the obligation against the decedent's estate was contrary to Florida law, no appeal from the trial court's decision was taken by the decedent and this Court concluded that under Florida law, the decree must stand. 378 U.S. at 543, 12 L.Ed 2d at 1023.

the Missouri Supreme Court, this Court stated that the full faith and credit clause prohibits a State from refusing to recognize a judgment obtained in another state on the ground that the foreign judgment was obtained by a procedure inconsistent with the policies of the forum state.

As can be seen from the above-discussion, each of the cases cited by Plaintiff is distinguishable from the instant appeal. The State of Florida has not refused to give full faith and credit to a foreign judgment. Moreover, Florida Statute 733.705 neither denies nor abridges the rights of Petitioner to seek to enforce her foreign judgment. The latter Statute simply enacts a procedure to be followed for the enforcement of Petitioner's rights, which Petitioner chose to ignore at her peril.[5] Accordingly, this Court should not grant Petitioner its request for a Writ of Certiorari as there has been no violation of the full faith and credit clause of the U.S.Constitution.

II. THE APPLICATION OF FLORIDA STATUTE 733.705(3) TO PETITIONER'S CLAIM AGAINST THE ESTATE OF ALFRED C. WEST DID NOT ABRIDGE PETITIONER'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

As an alternative argument, Petitioner baldly asserts that Florida Statute 733.705(3)'s 30-day limitation in which to commence an action upon a claim violates the due process clause of the

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[5] In failing to comply with Florida Statue 733.705 (3), Petitioner violated a rule of judicial procedure applicable to the filing of claims against an estate. See *In Re Jeffries' Estate*, 136 Fla. 410, 181 So. 833 (1938) and *In Re Goldman's Estate*, 79 So. 2d 846 (Fla. 1955),[(cases construed Florida Statute 733.18(2), predecessor to Florida Statute 733.705(3).] Such a rule, like any rule of civil or appellate procedure, is designed to secure the just, speedy and inexpensive determination of claims.

Fourteenth Amendment to the United States Constitution. Specifically, Petitioner argues that the 30 day limitation is "patently too short in the case of a foreign judgment when applied in a probate proceeding." (See Petition at p. 11.) Such an argument, unsupported by any citation to authority, reveals Petitioner's thorough misunderstanding of the Florida Probate laws governing the presentation of claims against an Estate.

As noted previously, Florida Statute 733.705 neither denies nor abridges the right of Petitioner to seek to enforce the Illinois divorce decree. Rather, this Statute simply enacts a procedure to be followed to enforce Petitioner's rights, if any, and if the limitation is reasonable it is constitutionally acceptable, as Petitioner acknowledges at pages 10 and 11 of her Petition. Moreover, the applicable limitation for the presentation of a claim is not thirty days, but rather Florida Statute 733.702 allows a claim period of three months following the first publication of the Notice of Administration, plus thirty days after an objection is filed pursuant to Florida Statute 733.705(2). (See Respondent's Appendix at p. A-1). Such a procedure reasonably contributes to the just, speedy and inexpensive administration of estates within the State of Florida. *Poncier v. State Department of Health and Rehabilitative Services*, 284 So. 2d. 463 (Fla.3d DCA 1973); *In Re Goldman's Estate*, 79 So. 2d. 846 (Fla.1955); and *In Re Jeffries' Estate*, 136 Fla. 410, 181 So. 833 (1938).

It is also important to note that Florida Rule of Civil Procedure 1.010 specifically provides that "the form, content, procedure and time in all special statutory proceedings shall be as provided by the Statute governing the proceedings, unless these rules provide to the contrary." (See Respondent's Appendix at p. A-4). In the case of a claim against an estate to which an objection has been filed, the Florida Rules of Civil Procedure do not alter or otherwise suspend the procedure set forth in Florida Statute 733.705(3) and Petitioner cannot now be heard to complain that the applicable procedures operate to deny Petitioner due process of law. Petitioner was fully aware of her rights and obligations

under the Florida Probate laws, having filed a Statement of Claim on July 21, 1981, with the Circuit Court for Collier County, Florida. After receiving notice of Respondent's objection to her claim, Petitioner chose to ignore the provisions of Florida Statute 733.705(3) and allowed nearly seven months to expire before commencing a suit upon her claim. Accordingly, the time limitations set forth in Florida Statute 733.705(3) did not operate to abridge Petitioner's due process rights under the Fourteenth Amendment to the U. S. Constitution.

III. FLORIDA STATUTE 733.705 IS APPLICABLE TO CLAIMS PRESENTED AGAINST A DECEDENT'S ESTATE, INCLUDING THOSE ARISING OUT OF A FOREIGN DIVORCE DECREE.

Petitioner's third and fourth "questions presented" to this Court fail to raise an issue within the scope of this Court's discretionary jurisdiction as set forth in 28 U.S.C. Section 1257 and Supreme Court Rule 17. At issue under Petitioner's third question is the relationship between Florida Statute 95.11(2) and Florida Statute 733.705(3), *a classic non-federal question which should not be reviewed by this Court*. Furthermore, even *assuming arguendo*, that Petitioner's third question does not fail to properly raise an issue within the scope of the Court's jurisdiction, it is clear that the lower state courts committed no error in applying Florida Statute 733.705(3) to Petitioner's claim for alimony payments filed against the Estate of Alfred C. West.

There can be no dispute that Florida Statute 95.11(2) is generally applicable to the commencement of a suit brought on a foreign judgment in order to establish or domesticate that judgment in the State of Florida. See, *American Fidelity Fire Insurance Company v. Paste-ups Unlimited, Inc.*, 368 F. Supp. 219 (S.D.N.Y. 1974); *United Stated v. Pearson*, 258 F.Supp. 686 (S.D.N.Y.1966); and *Milligan v. Wilson*, 130 So. 2d 644 (Fla. 2d DCA 1961). However, it is also settled that in seeking to enforce a

claim against an estate, a claimant must comply with those procedural rules and statutory provisions which limit and define the method for presentation and enforcement of rights against an estate, whether the same be enacted in the form of a set of rules or as specific statutory provisions. Florida Statute 733.705 is not in conflict with Florida Statute 95.11(2), but rather further defines and provides for an orderly procedure regarding the administration and litigation of claims against an estate. Special statutory proceedings take precedent over more general Statutes. See, Fla. R. Civ. Proc. 1.010. Petitioner cannot be heard to complain that Florida Statute 95.11(2) affords her a greater period of time in which to enforce a claim against the Estate of Alfred C. West.[6] To rule otherwise, is to disrupt the orderly and speedy administration of estates as provided by the Florida Legislature.

Petitioner cites *Lewis Marine Supply, Inc. v. Hurt*, 357 So. 2d. 252 (4th DCA 1978) in support of her contention that a claim for alimony payments, based upon her Illinois divorce decree, is not subject to Florida Statute 733.705. The facts in *Lewis Marine Supply, Inc.*, are easily distinguishable from those presented herein. In *Lewis Marine Supply, Inc.*, a complaint to enforce a contract for the redemption of stock was dismissed by the Circuit Court on the grounds that it contained no allegation of compliance with Florida Statute 733.702(1), the Statute which sets forth a limitation on the presentation of claims. On appeal, the District Court of Appeals reversed and held that no such allegation was necessary in order to state a cause of action. Further, the Court

[6] Petitioner,s argument would result in holding estates open for five years pending the commencement of a suit on any known or unknown foreign judgment to the detriment of the estate's heirs, beneficiaries and creditors. Such an absurd proposition conflicts with Florida Statute 733.901 which mandates that all estates be closed within one year from the date letters of administration are issued by the Circuit Court having jurisdiction. (See Respondent's Appendix at p. A-2).

noted that the cause of action did not appear to come within the purview of Section 733.702(1). Unlike Petitioner's claim for alimony payments, the complaint filed in *Lewis Marine Supply, Inc.*, did not present a claim against an Estate. Rather, the Plaintiffs therein sought to enforce a contract for the redemption of stock. Furthermore, the latter case involved Florida Statute 733.702(1), and not Florida Statute 733.705. This distinction is important since Florida Statute 733.702 is a "non-claim statute" and Florida Statute 733.705 operates as a rule of judicial procedure.[7] Accordingly, Petitioner's reliance upon *Lewis Marine Supply, Inc., v. Hurt, supra*, is misplaced.

IV. THE LOWER STATE COURTS DID NOT COMMIT REVIEWABLE ERROR BY REFRAINING FROM A DISCUSSION OF THE FULL FAITH AND CREDIT CLAUSE.

It is difficult to comprehend Petitioner's allegation of error under her third "question presented" to this Court. Equally confusing is Petitioner's diatrabe regarding her fourth "question presented". Apparently, Petitioner infers fault with Florida's judicial system of review even though the State's circuit and appellate courts afforded Petitioner an opportunity to be heard on any Constitutional question involving the Full Faith and Credit Clause. While none of the lower court decisions expressly discuss the constitutional issue raised by Petitioner, it is reasonable, indeed only logical, to conclude that such arguments were rejected by implication.

Petitioner next suggests that in refusing to hear her appeal, the Florida Supreme Court failed to follow the state's constitution

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[7] See court's discussion in *In Re Goldman's Estate*, 79 So.2d 846, 847 (1955). (Court construed Florida Statute 733.16 and 733.18(2), predecessors to 733.702 and 733.705 respectively).

regarding the high court's jurisdiction. In support of her claim Petitioner cites a string of pre-April 1, 1980 cases construing former Section 3(b)(1) of Article V of the Florida Constitution which provided that:

> "B...Jurisdiction - The Supreme Court:
>
> 1. Shall hear appeals from final judgments of trial courts imposing the death penalty and from orders of trial courts and decisions of District Courts of Appeal initially and directly passing on the validity of a state statute or a federal statute or treaty, or construing a provision of the State or Federal Constitution.

The above quoted provision of the State Constitution was amended, effective April 1, 1980, to read as follows:

> (B) *Jurisdiction - The Supreme Court*
>
> (1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of District Courts of Appeal declaring invalid a state statute or a provision of the state constitution...

As can be seen from reviewing Section 3(b)(1), effective April 1, 1980 and former Section 3(b)(1), this particular provision underwent a dramatic change. The right of a direct appeal to the Florida Supreme Court from Orders of trial courts initially passing on the validity of a state statute or a federal statute, or construing a provision of the State or Federal Constitution, has been substantially revised. Such an appeal must now be taken to the District Court of Appeals as was done by Petitioner in the instant case. Accordingly, the cases cited by Petitioner at pages 12 and 13 of her Petition no longer state the law with respect to the Florida Supreme Court's mandatory jurisdiction. Furthermore, there was no error by the Florida Supreme Court in refusing to hear Petitioner's Appeal as the District Court of Appeal,in affirming the orders of the Circuit Court, decided the matter without rendering an opinion. See *Jenkins v. State*, 385 So.2d 1356 (Fla 1980). Thus, Petitioner's contentions that a constitutional issue was ignored by the lower state courts and that the Supreme Court of Florida improperly refused to hear petitioner's appeal are un-

meritorious. Accordingly, Petitioner's petition for a Writ of Certiorari to the Supreme Court of Florida should be denied.

V. THE INSTANT APPEAL IS NOT RIPE FOR REVIEW SINCE PETITIONER HAS FILED AN ACTION TO ENFORCE HER CLAIM AGAINST THE ESTATE OF ALFRED C. WEST IN THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA.

Aside from the arguments set forth above, Respondent submits that this appeal is not ripe for review because there currently is pending before the U.S. District Court, Southern District of Florida, (Case No. 82-2087-CN-ALH), an action by petitioner to enforce her demand for alimony payments against the estate of Alfred C. West. (See Petition at p.9) Said action involves the same underlying claim as that presented herein and stems from the divorce decree entered by the Superior Court of Cook County, Illinois on October 16, 1963. Accordingly, Respondent submits that this appeal is not ripe for review herein and petitioner's request for a Writ of Certiorari to the Florida Supreme Court should be denied.

CONCLUSION

For all of the reasons stated above, Respondent respectfully prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

733.702 Limitations on presentation of claims

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, actions founded on fraud or other wrongful act or omission of the decedent, shall be binding on the estate, on the personal representative, or on any beneficiary, unless presented:

Amended by Laws 1981, c. 81-27, § 4, eff. Oct. 1, 1981.

(a) Within 3 months from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration had not been published.

(2) No cause of action heretofor or hereafter accruing, including, but not limited to, actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the time limited.

(3) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

(c) The filing of a claim by the Department of Revenue subsequent to the expiration of 3 months from the publication of the notice of administration as provided in paragraph (1)(a), provided it does so file within 30 days after the filing of the inventory by the personal representative.
Added by Laws 1980, c. 80-127, § 2, eff. July 1, 1980.

733.708 Compromise

When a proposal is made to compromise any claim, whether in suit or not, by or against the estate of a decedent or to compromise any question concerning the distribution of a decedent's estate, the court may enter an order authorizing the compromise if satisfied that the compromise will be for the best interest of the beneficiaries. The order shall relieve the personal representative of liability or responsiblity for the compromise. Claims against the estate may not be compromised until after the time for filing objections to claims has expired. Notice must be given to those who have filed objection to the claim proposed to be compromised.

733.901 Distribution; final discharge

(1) When a personal representative has completed administration except for distribution, he shall file a final accounting and a petition for discharge that shall contain:

(a) A complete report of all receipts and disbursements since the date of the last annual accounting or, if none, from the commencement of administration.

(b) A statement that he has fully administered the estate by

making payment, settlement, or other disposition of all claims and debts that were presented and the expenses of administration.

(c) The proposed distribution of the assets of the estate.

(d) Any prior distributions that have been made.

(e) A statement that objections to this report or proposed distribution of assets be filed within 30 days.

The final accounting and petition for discharge shall be filed and served on all interested persons within 12 months after issuance of letters for estates not required to file a federal estate tax return, otherwise 12 months from the date the return is due, unless the time is extended by the court for cause shown after notice to interested persons. The petition shall state the status of the estate and the reasons for the extension.

(2) If no objection to the accounting or petition for discharge has been filed within 30 days from the date of service of copies on interested persons, or if service has been waived, the personal representative may distribute the estate according to the plan of distribution set forth in the petition without a court order. The assets shall be distributed free from the claims of any interested person and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety an any bond.

(3) If an objection to the petition for discharge has been filed within the time allowed, the court shall determine the plan of distribution and, upon receipt of evidence that the estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, the court shall enter an order discharging the personal representative and releasing the surety on any bond.

(4) The 30-day period contained in subsection (2) may be

waived upon written consent of all interested persons.

(5) The discharge of the personal representative shall release the personal representative of the estate and shall bar any action against the personal representative, as such or individually, and his surety.

Rule 1.010. Scope and Title of Rules

These rules apply to all actions of a civil nature and all special statutory proceedings in the circuit courts and county courts except those to which the probate and guardianship rules or the summary claims procedure rules apply. The form, content, procedure and time for pleading in all special statutory proceedings shall be as prescibed by the statutes governing the proceeding unless these rules specifically provide to the contrary. These rules shall be construed to secure the just, speedy and inexpensive determination of every action. These rules shall be known as the Florida Rules of Civil Procedure.

Amended effective Oct. 1, 1968 (211 So.2d 206); Oct. 9, 1980, effective Jan. 1, 1981 (391 So.2d 165).